



Rhode Island Executive Office of Health and Human Services  
Appeals Office, West Road, Hazard Bldg, Cranston, RI 02920  
phone: 401.462.2132 fax 401.462.0458

Docket # 16-1830  
Hearing Date: August 9, 2016

Date: October 18, 2016



### **ADMINISTRATIVE HEARING DECISION**

The Administrative Hearing that you requested has been decided against you upon a de novo (new and independent) review of the full record of hearing. During the course of the proceeding, the following issue(s) and Agency regulation(s) were the matters before the hearing:

#### **EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES (EOHHS) MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR) SECTION: 0352.15 ELIGIBILITY BASED ON DISABILITY**

The facts of your case, the Agency rules and regulations, and the complete administrative decision made in this matter follow. Your rights to judicial review of this decision are found on the last page.

Copies of this decision have been sent to the following: You (the appellant), Yolande Ramos (your authorized representative), and Agency representatives: Julie Hopkins, Joan Auclair, and Diane Nawrocki.

Present at the hearing were: You (the appellant), Yolande Ramos (your authorized representative) and Jennifer Duhamel, RN (Agency representative).

#### **EOHHS RULES AND REGULATIONS:**

Please see the attached APPENDIX for pertinent excerpts from the Executive Office of Health and Human Services Medicaid Code of Administrative Rules (MCAR).

#### **APPEAL RIGHTS:**

Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.

**ISSUE:** Is the appellant disabled for the purposes of the Medical Assistance Program (MA)?

**TESTIMONY AT HEARING:**

**The Agency representative testified:**

- In order to be eligible for Medical Assistance (MA) an applicant must be either aged (age 65 years or older), blind, or disabled.
- The Medical Assistance Review Team (MART) determines disability for the MA Program.
- The MART is comprised of public health nurses, a social worker and doctors specializing in internal medicine, surgery, psychology and vocational rehabilitation.
- The MART follows the same five-step evaluation as SSI for determining whether someone is disabled.
- To be considered disabled for the purposes of the Medical Assistance Program, the appellant must have a medically determinable impairment that is severe enough to render him incapable of any type of work, not necessarily his past work. In addition, the impairment must last, or be expected to last for a continuous period of not less than twelve (12) months.
- The MART reviewed an Agency MA-63 form (Physician's Examination Report), an Agency AP-70 form (Information for the Determination of Disability)
- A review of the available information revealed that history of a kidney removal was noted on the MA-63 form.
- He was working part-time at the date of application.
- There were no SSI applications pending, and the last SSI application was filed many years ago.
- He had been found eligible for the Medicaid MAGI (Modified Adjusted Gross Income) coverage group.
- Having only one kidney is not evidence of a severe impairment.

- They did not receive evidence that would establish the existence of a severe medically determinable impairment that would limit functioning, meet the durational requirements, or have residual deficits when following prescribed treatment.
- He was not disabled for the purpose of the Medical Assistance program.

**The appellant, assisted by his social caseworker, testified:**

- He is currently employed part-time, one day per week.
- Removal of the kidney took place in 1992.
- He has a developmental disability, ADHD, and a learning disability.
- Based on those conditions he was determined eligible for services with the Department of Developmental Disabilities (DDD).
- Most of the evaluations used to support his diagnoses were completed in his high school's special education program.
- He currently works one day per week in a warehouse for a sporting goods business.
- He hangs clothing for sale, sweeps the warehouse, and removes trash.
- He can understand and remember basic verbal directions, and knows when to ask for assistance.
- He is not as confident about following written instructions.
- Sometimes he has difficulty concentrating, but he is better at concentration as an adult than he was during childhood.
- He knows that if he needs to remember more than 2 or 3 things, it is best to make a list.
- He can help with household chores.
- He is interested in watching sports, but does not play them himself.
- He does have a driver's license, but is without a car at this time.

- He is currently working with the Office of Rehabilitation Services (ORS).
- ORS found his current job, and is still exploring other options for him as he only works one day per week.
- They have not arranged any training programs for him at this time.
- He is not currently taking any medication for ADHD.
- He took some ADHD medications prior to fifth grade, but stopped due to unpleasant side effects.
- He had worked for the Salvation Army for about one week, and a two-week program at T J Maxx arranged by Goodwill Industries.
- He had a physical examination last December, but does not have a regular schedule of visits with physicians for any other conditions.
- He had applied for SSI in the past, and completed a consultative examination during that process.
- His social worker has observed that while he is high functioning in some areas, he struggles with certain tasks.
- She has found that he needs assistance with directions.
- Verbal communication is good, but he sometimes needs repetition and reminders.
- He lives with his parents, but did not know if they retained any of his school or testing records.
- He requested to hold the record of hearing open for the submission of additional evidence.

**FINDINGS OF FACT:**

- The appellant filed an application for Medical Assistance (MA) MR Waiver on March 4, 2016.
- The Agency issued a written notice of denial of MA dated May 23, 2016.
- The written notice erroneously contained language referring to medical improvement as explained in MCAR rules 0318.20.
- As the relevant disability rules were also cited in the notice, it was not considered to be fatally flawed.
- The appellant filed a timely request for hearing received by the Agency on June 6, 2016.
- Per the appellant's request, the record of hearing was held open through the close of business on September 13, 2016 for the submission of additional evidence.
- Per the appellant's request for extension of the held open period, the record remained open until October 11, 2016.
- Additional evidence from Cranston Public Schools, and Luz Teixeira, PhD that was received during the held open period was added to the record of hearing.
- As of the date of this decision, the MART had not withdrawn the notice under appeal.
- At the time of application, the appellant was engaging in part-time employment,
- The appellant's employment did not rise to the level of substantial gainful activity.
- The appellant did not meet his burden of proof to establish with acceptable clinical and diagnostic evidence that he is presently impaired by a severe medically determinable impairment or combination of impairments that would have a measurable impact on functional capabilities which would preclude his ability to perform basic work activities.
- The appellant is not disabled as defined in the Social Security Act.
- The appellant is not disabled for the purposes of the Medical Assistance Program.

## **DISCUSSION OF THE MEDICAL EVIDENCE RECORD:**

The record of hearing consists of:

- ✓ An Agency MA-63 dated December 28, 2015 and signed by John Twomey, NP (CCAP).
- ✓ An Agency AP-70 dated December 28, 2015 and signed by the appellant.
- ✓ Records of Cranston Public Schools for February 5, 2007 to April 25, 2007.
- ✓ A psychological consultative examination report dated February 26, 2010 and signed by Luz Teixeira, PHD.
- ✓ Hearing testimony.

Medical and other evidence of an individual's impairment is treated consistent with (20 CFR 416.913). The record of hearing was held open through the close of business on October 11, 2016 for the submission of additional evidence relative to IQ testing, cognitive functioning, learning disabilities, or other relevant psychological or medical evaluations. Records were received during the held open period. The new records received were from 2007 and 2010. Although a WAIS (Wechsler Adult Intelligence Standard) IQ score would remain valid throughout the last 10 years, no score was included within the evidence submitted. Other characteristics of any alleged disability would require support of acceptable clinical and diagnostic evidence from within the past year due to the necessity to determine the basis for any diagnosis claimed, the treatment prescribed, and the individual's compliance with treatment and its effectiveness.

According to 20 CFR 416.916 (If you fail to submit medical and other evidence): You must co-operate in furnishing us with, or in helping us to obtain or identify, available medical or other evidence about your impairment(s). When you fail to cooperate with us in obtaining evidence, we will have to make a decision based on the information available in your case. We will not excuse you from giving us evidence because you have religious or personal reasons against medical examinations, tests, or treatment.

In order to get benefits, an individual must follow treatment prescribed by his physician if this treatment can restore or improve ability to work. If the individual does not follow the prescribed treatment without good reason, he will not be found disabled. Not following prescribed remedies or infrequently seeking medical treatment undermines complaints of disabling symptoms.

All medical opinion evidence is evaluated in accordance with the factors set forth at (20 CFR 416.927). The record of hearing does not include evidence from any treating source with qualifying frequency, length, nature, or extent of treatment justifying controlling weight of opinion. The appellant apparently has not kept regular appointments with physicians of any specialty

The MART is considered a non-examining source when expressing opinions regarding an individual's condition. At the time of application, the MART requested medical records from the appellant's primary care provider, and verified status with Social Security, finding no active case or application in progress. As a result, they had only two agency forms completed in December 2015 to rely on for information, and no medical records from any source to support the opinions expressed, as required by federal regulations. The available information did not establish the existence of any mental impairments, and noted a single non-severe physical condition. New information was submitted during the held open period. As of the date of this decision, the agency has not withdrawn the denial notice on which the appeal was made based on that additional evidence.

The appellant has alleged that symptoms resulting from developmental disabilities, ADHD (attention deficit hyperactivity disorder), and learning disabilities impair him. Records received as evidence documented cognitive testing and function between 2007 and 2010. In 2007, the appellant was a minor, and a disability evaluation would have been determined in accordance with regulations pertaining to that age group based on a significantly different set of criteria than this current evaluation requires. The psychological evaluation report notes that there were no assessments available in 2010, and that he was not in treatment for his impairments at that time.

Clearly he had a history of academic performance for reading writing, and mathematics which fell below actual grade levels throughout his school years. His delays were attributed to his premature birth, as was his atrophied kidney which was removed at age 2. He completed school through grade 12 with support of special education classes, and enrolled in CCRI with a limited class schedule. He has also participated in vocational rehabilitation work activities with Goodwill Industries and The Office of Rehabilitation Services (ORS).

A nurse practitioner from his primary care practice completed an agency MA-63 form in December 2015. He noted that his patient experienced no physical restrictions, and opined that there would be moderate amounts of mental limitations. No supportive progress notes establishing what examinations, tests, or objective findings that opinion was based on were included.

At the last evaluation of record 6 years ago the appellant was described as alert and oriented in all spheres. He was able to respond relevantly and coherently to questions, although his speech was poor. Motor activity was within normal limits, his affect was unremarkable. His memory was intact, and he could add and subtract. As his attention, concentration, abstract reasoning, insight and judgment were somewhat reduced, the examiner estimated that his cognitive functioning would not exceed borderline range, although no actual testing was indicated. He testified that he is currently performing better than in the past with respect to understanding and remembering instructions, and that he uses tools

such as making lists to manage tasks. He also reported independent management of activities of daily living when he completed his AP-70 form.

He noted that he sleeps well, does household chores, likes to watch television and has a driver's license. He indicated that he socializes with friends and family, and was found to respond appropriately to supervision. His task persistence was adequate, and he showed perseverance even with difficult tasks. There are no updates to establish if he has had any additional education, therapy, medication management, or vocational training in the past 6 years.

## **CONCLUSION:**

In order to be eligible for Medical Assistance (MA) benefits, an individual must be either aged (65 years or older), blind, or disabled. When the individual is clearly not aged or blind and the claim of disability has been made, the Agency reviews the evidence in order to determine the presence of a characteristic of eligibility for the Medical Assistance Program based upon disability. Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve (12) months.

Under the authority of the Social Security Act, the Social Security Administration has established a **five-step** sequential evaluation process for determining whether or not an individual is disabled (20 CFR 416.920). State policy directs that disability determination for the purposes of the MA program shall be determined according to the Social Security sequential evaluation process. The individual claimant bears the burden of meeting steps one through four, while the burden shifts to DHS to meet step five. The steps must be followed in sequence. If it is determined that the individual is disabled or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step. If it cannot be determined that the individual is disabled or not disabled at a step, the evaluation continues to the next step.

**Step one:** A determination is made if the individual is engaging in substantial gainful activity (20 CFR 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. Substantial work activity is work that involves doing significant physical or mental activities (20 CFR 416.972(a)). Gainful work activity is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he/she has demonstrated the ability to engage in SGA (20 CFR 416.974 and 416.975). If an individual is actually engaging in SGA, he/she will not be found disabled, regardless of how



severe his/her physical or mental impairments are, and regardless of his/her age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

The appellant has testified that he is currently working one day per week as part of a program he has arranged with ORS. As there is no evidence that the appellant is engaging in SGA, the evaluation continues to step two.

**Step two:** A determination is made whether the individual has a medically determinable impairment that is severe, or a combination of impairments that is severe (20 CFR 416.920(c)) and whether the impairment has lasted or is expected to last for a continuous period of at least twelve months (20 CFR 416.909). If the durational standard is not met, he/she is not disabled. An impairment or combination of impairments is not severe within the meaning of the regulations if it does not significantly limit an individual's physical or mental ability to perform basic work activities. Examples of basic work activities are listed at (20 CFR 416.921(b)). A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only by the individual's statement of symptoms. Symptoms, signs and laboratory findings are defined as set forth in (20 CFR 416.928). In determining severity, consideration is given to the combined effect of all of the individual's impairments without regard to whether any single impairment, if considered separately, would be of sufficient severity (20 CFR 416.923). If a medically severe combination of impairments is found, the combined impact of the impairments will be considered throughout the disability determination process. If the individual does not have a severe medically determinable impairment or combination of impairments, he/she will not be found disabled. Factors including age, education and work experience are not considered at step two. Step two is a *de minimis* standard. Thus, in any case where an impairment (or multiple impairments considered in combination) has more than a minimal effect on an individual's ability to perform one or more basic work activities, adjudication must continue beyond step two in the sequential evaluation process.

At step two of the sequential evaluation, the appellant bears the burden of proof. The record, as it exists, reveals that the appellant has not met his burden of proof relative to the requirement to support allegations of current disability with acceptable clinical and diagnostic medical evidence. Although the evidence documented a history of childhood delays requiring special accommodations, the records and testimony do not establish that adult characteristics of his alleged impairments would have a measurable impact on functional ability required to perform basic work-related activities at the present time. Therefore, the sequential evaluation of disability ends at Step two.

After careful and considerate review of the Agency's policies as well as the evidence and testimony submitted, this Appeals Officer concludes that the appellant is not disabled as defined in the Social Security Act, and for the purpose of the Medical Assistance Program.

**Pursuant to DHS Policy General Provisions section 0110.60.05, action required by this decision, if any, completed by the Agency representative must be confirmed in writing to this Hearing Officer.**

Carol J. Ouellette  
Appeals Officer

## APPENDIX

### **0352.15 ELIGIBILITY BASED ON DISABILITY**

REV:07/2010

- A. To qualify for Medical Assistance, an individual or member of a couple must be age 65 years or older, blind or disabled.
- B. The Department evaluates disability for Medical Assistance in accordance with applicable law including the Social Security Act and regulations (20 C.F.R sec. 416.901-416.998).
  - 1. For any adult to be eligible for Medical Assistance because of a disability, he/she must be unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted, or can be expected to last for a continuous period of not less than twelve (12) months (20 C.F.R. sec. 416.905).
  - 2. The medical impairment must make the individual unable to do his/her past relevant work (which is defined as "work that you have done within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn to do it" (20 C.F.R. sec. 416.960(b)) or any other substantial gainful employment that exists in the national economy (20 C.F.R. sec. 416.905).
  - 3. The physical or mental impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. The individual's statements alone are not enough to show the existence of impairments (20 C.F.R. sec. 416.908).

### **0352.15.05 Determination of Disability**

REV:07/2010

- A. Individuals who receive RSDI or SSI based on disability meet the criteria for disability.
  - 1. A copy of the award letter or similar documentation from the Social Security Administration is acceptable verification of the disability characteristic.
  - 2. For individuals who were receiving SSI based on disability and were closed upon entrance into a group care facility because their income exceeds the SSI standard for individuals in group care, a copy of the SSI award letter serves as verification of the disability characteristic.

- B. For all others, a disability review must be completed and a positive finding of disability must be made before eligibility for MA based on disability can be established.
  - 1. In such cases, it is the responsibility of the agency representative to provide the applicant with the following:
    - a. Form letter AP-125, explaining the disability review process
    - b. Form MA-63, the Physician Examination Report with instructions
    - c. Form AP-70, the applicant's report of Information for Determination of Disability
    - d. Three copies of form DHS-25M, Release of Medical Information
    - e. A pre-addressed return envelope
  - 2. When returned to DHS, the completed forms and/or other medical or social data are date stamped and promptly transmitted under cover of form AP-65 to the MA Review Team (MART).
    - a. If the completed forms are not received within thirty (30) days of application, a reminder notice is sent to the applicant stating medical evidence of their disability has not been provided and needs to be submitted as soon as possible.
    - b. If all completed forms are not received within forty-five (45) days from the date of application, the referral to MART is made with the documentation received as of that date.
  - 3. It is the responsibility of the applicant to provide medical and other information and evidence required for a determination of disability.
    - a. The applicant's physician may submit copies of diagnostic tests which support the finding of disability.
    - b. The physician may also choose to submit a copy of the applicant's medical records or a letter which includes all relevant information (in lieu of or in addition to the MA-63).

### **0352.15.10      Responsibility of the MART**

REV:07/2010

- A. The Medical Assistance Review Team (MART) is responsible to:
  - 1. Make every reasonable effort to assist the applicant in obtaining any additional medical reports needed to make a disability decision.
    - a. Every reasonable effort is defined as one initial and, if necessary, one follow-up request for information.
    - b. The applicant must sign a release of information giving the MART permission to request the information from each potential source in order to receive this assistance.
  - 2. Analyze the complete medical data, social findings, and other evidence of disability submitted by or on behalf of the applicant.

3. Provide written notification to the applicant when a decision on MA eligibility cannot be issued within the ninety (90) day time frame because a medical provider delays or fails to provide information needed to determine disability.
  4. Issue a decision on whether the applicant meets the criteria for disability based on the evidence submitted following the five-step evaluation process detailed below.
    - a. The decision regarding disability is recorded on the AP-65 and transmitted along with the MART case log to the appropriate DHS field office where the agency representative issues a decision on MA eligibility.
    - b. All medical and social data is retained by the MART.
- B. To assure that disability reviews are conducted with uniformity, objectivity, and expeditiously, a five-step evaluation process is followed when determining whether or not an adult individual is disabled.
1. The individual claimant bears the burden of meeting Steps 1 through 4, but the burden shifts to DHS at Step 5.
    - a. The steps must be followed in sequence.
    - b. If the Department can find that the individual is disabled or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.
    - c. If the Department cannot determine that the individual is disabled or not disabled at a step, the evaluation will go on to the next step (20 C.F.R. sec. 416.920).
  2. Step 1  
A determination is made if the individual is engaging in substantial gainful activity (20 C.F.R. sec. 416.920(b)). If an individual is actually engaging in substantial gainful activity, the Department will find that he/she is not disabled. "Substantial gainful activity" is defined at 20 C.F.R. sec. 416.972.
  3. Step 2  
A determination is made whether the individual has a medically determinable impairment that is severe, or a combination of impairments that is severe (20 C.F.R. sec. 416.920(c)) and whether the impairment has lasted or is expected to last for a continuous period of at least 12 months (20 C.F.R. sec. 416.909). If the durational standard is not met, the Department will find that he/she is not disabled.
    - a. An impairment or combination of impairments is not severe within the meaning of the regulations if it does not significantly limit an individual's physical or mental ability to perform basic work activities (20 C.F.R. sec. 416.921). Examples of basic work activities are listed at 20 CFR sec. 416.921(b)).
    - b. In determining severity, the Department considers the combined effect of all of an individual's impairments without regard to whether any such impairment, if considered separately, would be sufficient severity (20 C.F.R. sec. 416.923).

- i. If the Department finds a medically severe combination of impairments, then the combined impact of the impairments will be considered throughout the disability determination process.
    - ii. If the individual does not have a severe medically determinable impairment or combination of impairments, the Department will find that he/she is not disabled.
  - c. The Department will not consider the individual's age, education, or work experience at Step 2.
  - d. Step 2 is a de minimis standard. In any case where an impairment (or multiple impairments considered in combination) has more than a minimal effect on the individual's ability to perform one or more basic work activities, adjudication must continue beyond Step 2 in the sequential evaluation process.
4. Step 3
- A determination is made whether the individual's impairment or combination of impairments meet or medically equal the criteria of an impairment listed in the Social Security Administration's Listings of Impairments (20C.F.R. Pt 404, Appendix 1 to Subpart P).
- a. If the individual's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement, the individual is disabled.
  - b. If it does not, the analysis proceeds to the next step.
5. Step 4
- A determination is made as to the individual's residual functional capacity (RFC) and whether, given the RFC, he/she can perform his/her past relevant work (20 C.F.R. sec. 416.920(e)).
- a. An individual's RFC is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments.
    - i. In making this finding, all of the individual's impairments, including impairments that are not severe will be considered (20 C.F.R. sec. 416.920(e), 416.945, and Social Security Ruling ("S.S.R.") 96-8p as applicable and effective).
    - ii. The Department will assess the individual's RFC in accordance with 20 C.F.R. sec. 416.945 based on all of the relevant medical and other evidence, including evidence regarding his/her symptoms (such as pain) as outlined in 20 C.F.R. sec. 416.929(c).
  - b. It must be established whether the individual has the RFC to perform the requirements of his/her past relevant work either as he/she has actually performed it or as it is generally performed in the national economy.

- c. The Department will use the guidelines in 20 C.F.R. sec. 416.960 through 416.969, and consider the RFC assessment together with the information about the individual's vocational background to make a disability decision. Further, in assessing the individual's RFC, the Department will determine his/her physical work capacity using the classifications sedentary, light, medium, heavy and very heavy as those terms are defined in 20 C.F.R. sec. 416.967 and elaborated on in S.S.R. 83-10, as applicable and effective.
  - d. If the individual has the RFC to do his/her past relevant work, the individual is not disabled. If the individual is unable to do any past relevant work, the analysis proceeds to the fifth and final step in the process.
6. Step 5
- The Department considers the individual's RFC, together with his/her age, education and work experience, to determine if he/she can make an adjustment to other work in the national economy (20 C.F.R. sec. 416.920(g)).
- a. At Step 5, the Department may determine if the individual is disabled by applying certain medical-vocational guidelines (also referred to as the "Grids", 20 C.F.R. Pt. 404, Appendix 2 to Subpart P).
    - i. The medical-vocational tables determine disability based on the individual's maximum level of exertion, age, education and prior work experience.
    - ii. There are times when the Department cannot use the medical-vocational tables because the individual's situation does not fit squarely into the particular categories or his/her RFC includes significant non-exertional limitations on his/her work capacity. Non-exertional limitations include mental, postural, manipulative, visual, communicative or environmental restrictions.
  - b. If the individual is able to make an adjustment to other work, he/she is not disabled.
  - c. If the individual is not able to do other work, he/she is determined disabled.

## **0352.15.15 Evidence**

REV:07/2010

- A. Medical and other evidence of an individual's impairment is treated consistent with 20 C.F.R. sec. 416.913.
- B. The Department evaluates all medical opinion evidence in accordance with the factors set forth at 20 C.F.R. sec. 416.927.

- C. Evidence that is submitted or obtained by the Department may contain medical opinions.
1. "Medical opinions" are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of an individual's impairments, including:
    - a. Symptoms
    - b. Diagnosis and prognosis
    - c. What the individual can do despite impairments
    - d. Physical or mental restrictions
  2. Medical opinions include those from the following:
    - a. Treating sources - such as the individual's own physician, psychiatrist or psychologist
    - b. Non-treating sources - such as a physician, psychiatrist or psychologist who examines the individual to provide an opinion but does not have an ongoing treatment relationship with him/her
    - c. Non-examining sources -such as a physician, psychiatrist or psychologist who has not examined the individual but provides a medical opinion in the case
  3. A treating source's opinion on the nature and severity of an individual's impairment will be given controlling weight if the Department finds it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record.
    - a. If a treating source's opinion is not given controlling weight, it will still be considered and evaluated using the same factors applied to examining and non-examining source opinions.
    - b. The appeals officer will give good reasons in the administrative hearing decision for the weight given to a treating source's opinion.
  4. The Department evaluates examining and non-examining medical source opinions by considering all of the following factors:
    - a. Examining relationship
    - b. Nature, extent, and length of treatment relationship
    - c. Supportability of opinion and its consistency with record as a whole
    - d. Specialization of medical source
    - e. Other factors which tend to support or contradict the opinion.
    - f. If a hearing officer has found that a treating source's opinion is not due controlling weight under the rule set out in the foregoing paragraph, he/she will apply these factors in determining the weight of such opinion.
    - g. Consistent with the obligation to conduct a de novo (or new and independent) review of an application at the administrative hearing, the appeals officer will consider any statements or opinions of the Medical Assistance Review Team (MART) to be a non-examining source opinion and evaluate such statements or opinions applying the factors set forth at 20 C.F.R. sec. 416.927(f).



- D. Symptoms, signs and laboratory findings are defined as set forth in 20 C.F.R. sec. 416.928.
- E. The Department evaluates symptoms, including pain, in accordance with the standards set forth at 20 C.F.R. sec. 416.929 and elaborated on in S.S.R. 96-7p, as applicable and effective.

## **0352.15.20      Drug Addiction and Alcohol**

REV:07/2010

- A. If the Department finds that the individual is disabled and has medical evidence of his/her drug addiction or alcoholism, the Department must determine whether the individual's drug addiction or alcoholism is a contributing factor material to the determination of disability; unless eligibility for benefits is found because of age or blindness.
  - 1. The key factor the Department will examine in determining whether drug addiction or alcoholism is a contributing factor material to the determination of disability is whether the Department would still find the individual disabled if he/she stopped using drugs or alcohol.
  - 2. The Department applies the standards set forth in 20 C.F.R. sec. 416.935 when making this determination.

## **0352.15.25      Need to Follow Prescribed Treatment**

REV:07/2010

- A. In order to get MA benefits, the individual must follow treatment prescribed by his/her physician if this treatment can restore his/her ability to work.
  - 1. If the individual does not follow the prescribed treatment without a good reason, the Department will not find him/her disabled.
  - 2. The Department will consider the individual's physical, mental, educational, and linguistic limitations (including any lack of facility with the English language) and determine if he/she has an acceptable reason for failure to follow prescribed treatment in accordance with 20 C.F.R. sec.416.930.
  - 3. Although the question must be evaluated based on the specific facts developed in each case, examples of acceptable reasons for failing to follow prescribed treatment can be found in 20 C.F.R. sec. 416.930(c) and S.S.R. 82-59, as applicable and effective.

**352.15.30            Conduct of the Hearing**

REV:07/2010

- A. Any individual denied Medical Assistance based on the MA Review Team's decision that the disability criteria has not been met, retains the right to appeal the decision in accordance with Section 0110; COMPLAINTS AND HEARINGS in the DHS General Provisions.
1. A hearing will be convened in accordance with Department policy and a written decision will be rendered by the Appeals officer upon a de novo review of the full record of hearing.
  2. The hearing must be attended by a representative of the MART and by the individual and/or his/her representative.

## NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.